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Brazil's Anti-Corruption "Clean Companies Act"

Effective January 29, 2014

Applicable to "Legal Persons"
- Business/Company?
- Foundation
- Association
- Foreign Company

YES ↓

Jurisdiction
- Domiciled in Brazil?
- Operating an affiliate in Brazil?
- Representation Office in Brazil?

YES ↓

Act imposes *strict liability* if prohibited acts performed for or on behalf of the legal person →

NO → **No Liability**

Sources of Liability
- Provide direct or indirect "improper benefit"/bribe to government employee ("public agent")?
- Conceal real interest or identities of bribe recipient?
- Finance or otherwise facilitate performance of the illegal acts?
- Engage in bid rigging and related conduct?
- Fraudulently modify or extend contracts with government?
- Obstruct Justice or otherwise intervene with a related ongoing investigation/inquiry?

NO → **No Liability**

YES →

Administrative Liability
- *Fine* - .1% - 20% of the gross income of the fiscal year prior to the institution of the administrative proceedings or the benefit gained, whichever is greater
- *Public Naming & Shaming* - Publication of adverse judgment in wide-circulation/ national circulation press (and at company's cost) and 30-day or more public posting of notice of adverse judgment in the business

Criteria for Calculation of Penalty
- Seriousness of the violation
- Benefit gained or sought
- Extent to which the violation was completed
- Degree of injury or "negative effect" of the violation
- "Financial position" of violator
- Cooperation in the investigation
- Effectiveness of any internal controls, policies, and procedures

Judicial Liability
- Loss of assets, rights, or amounts gained from illegal conduct
- Suspension/partial prohibition on operations
- Dissolution (if company was "habitually" used to facilitate or promote illegal acts or was used to conceal interests/identity of beneficiaries of the acts committed)

Notes Concerning Company Liability
- Successor liability generally limited to fine and restitution
- Liability not extinguished by change in corporate form/ merger/divestiture
- Joint and several liability for misconduct by subsidiary/ parent/affiliate
- "Leniency agreements" based on company's cooperation

Notes Concerning Individual Liability
- Not excluded by Clean Companies Act
- Manager/administrator liability based on personal culpability

The information contained herein is not, and should not be relied upon as, legal advice, and is not a substitute for qualified legal counsel.